IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6263 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G S R T C

Versus

MANHARLAL C JOSHI

Appearance:

MR HARDIK C RAWAL for Petitioner

MR MUKESH H RATHOD for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 22/09/2000

ORAL JUDGEMENT

#. By way of this petition the State Road Transport Corporation challenges the award of Labour Court, Rajkot in Ref. (LCR) No.355/85 whereby the respondent, a conductor is ordered to be reinstated with full backwages.

#. The Learned Counsel for the petitioner submitted at the outset that even before filing of the present petition the respondent is already reinstated on 18.7.1987 subject to the result of this petition. The impugned award is challenged mainly on the ground that the Labour Court has based its findings and order on the fact that during the course of departmental inquiry only the reporter of the misconduct was examined. It is true that pursuant to the serious charges of not issuing tickets after collecting fare only the reporter who was an officer of the petitioner was examined in evidence during the departmental inquiry conducted against the respondent. The Labour Court has observed that no independent witness corroborating the statement of the reporter was examined during the inquiry. It is also held that on the basis of the finding of such inquiry the order and punishment of dismissal would be too harsh. The Labour Court has also taken into account the defence of the respondent to the effect that he was in the process of issuing tickets when the bus was checked.

#. The Learned Counsel for the petitioner has vehemently argued that it was not necessary for the management to examine any other independent witness to prove the charges levelled against the respondent and once the serious charges of collecting fare without issuing tickets were established and found to have been proved in the departmental inquiry, the Labour Court had no jurisdiction or justification to interfere with the resultant order of punishment. The Learned Counsel for the petitioner has relied upon the judgment of the Supreme Court in State of Haryana Vs. Rattan Singh reported in AIR 1977 SC 1512, wherein it is observed that,

> "We cannot hold that merely because statements of passengers were not recorded the order that followed was invalid. Likewise, the reevaluation of the evidence on the strength of co-conductor's testimony is a matter not for the court but for the administrative tribunal. In conclusion, we do not think the courts below were right in over-turning the finding of the domestic tribunal."

It was further submitted that, even if it may be too late in the day to reverse the order of reinstatement after 13 years of the respondent's service after the impugned award, the respondent deserves to be effectively punished for the misconduct which was proved in the domestic

inquiry.

#. The Learned Counsel for the respondent submitted that the Labour Court has arrived at a finding that the respondent was in the process of issuing tickets and he had no intention of misappropriating the amount, besides which the past record of the respondent also did not justify the harsh punishment of dismissal.

#. In these facts and circumstances, the reasoning and logic adopted in the impugned order discarding the finding of the inquiry only on the ground of only the reporter having been examined in the enquiry cannot be approved in view of observation of the Supreme Court quoted hereinabove. Therefore, even if the power under Sec.11A of the I.D.Act could have been legitimately invoked by the respondent, the order imposing no punishment at all cannot be sustained. In the peculiar facts and circumstances of the case, the ends of justice would be met if the order regarding backwages were modified.

#. In a recent judgment in U.P. State Road Transport Corporation Vs. Mahesh Kumar Mishra (9 AIR 2000 SC 1151), the Hon'ble Supreme Court has observed that the High Court can interfere with the punishment inflicted upon the delinquent employee if that punishment shocks the conscience of the Court. Accordingly, in somewhat similar circumstances, the award of reinstatement with only 25% backwages was upheld. Respectfully following the same, in the facts and circumstances of the present case, the impugned award is modified to the extend that the respondent shall be entitled to reinstatement with continuity of service with 25% backwages. Rule is made absolute accordingly with no order as to costs. Rule is made absolute accordingly with no order as to costs.

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